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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 MELVIN THOMPSON,

11 Plaintiff,

12 v.

13 STATE OF NEVADA, *et al.*,

14 Defendants.
15

Case No. 2:10-CV-01096-KJD-LRL

ORDER

16 Presently before the Court is Defendants' Motion to Dismiss (#7). Plaintiff filed a response
17 in opposition (#10) and Countermotion to Amend (#11).¹ Defendants filed a reply (#12) in support of
18 their motion and in opposition to the countermotion to amend. Plaintiff's Unopposed Motion to
19 Extend (#8) is **GRANTED nunc pro tunc**.

20 Defendants correctly assert that the first cause of action for retaliation for exercise of
21 Plaintiff's First Amendment right to free speech and third cause of action for Fourteenth Amendment
22 denial of due process must be dismissed because the State of Nevada has not waived its sovereign
23 immunity. The Eleventh Amendment bars suits in United States Courts against states, and by
24 extension, state agencies. See Bank of Lake Tahoe v. Bank of Am., 318 F.3d 914, 916-17 (9th Cir.
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¹Plaintiff failed to attach a Proposed Amended Complaint in violation of Local Rule 15-1(a).

1 2002)(citing Lapides v. Board of Regents, 535 U.S. 613 (2002)). If Plaintiff wishes to amend his
2 complaint to assert a claim under 42 U.S.C. § 1983, he must name specific individuals who violated
3 a constitutional right. Further the complaint must assert that Plaintiff was disciplined for speech
4 concerning a public, rather than private, matter. Finally, to amend his complaint to state a claim for
5 violation of due process, Plaintiff must specify facts describing how his right to due process was
6 violated. Plaintiff's mere legal conclusion that due process was violated will be insufficient to state a
7 claim.

8 Finally, Plaintiff's second cause of action for retaliation under Title VII of the Civil Rights
9 Act of 1964 42 U.S.C. § 2000(e) fails to state a claim, because Plaintiff has not identified which
10 protected category and conduct under Title VII caused Defendants to retaliate against him. Title VII
11 protects employees against discrimination based on an individual's race, color, religion, sex, or
12 national origin. It does not extend protection to discrimination against "whistleblowers." If Plaintiff
13 wishes to amend his complaint to assert a claim for retaliation under Title VII, he must assert facts
14 showing that he was retaliated against in violation of Title VII.

15 Since leave to amend should be freely granted, Plaintiff's motion for leave to amend is
16 granted. However, failure to file the amended complaint curing the deficiencies noted will result in
17 Plaintiff's complaint being dismissed with prejudice.

18 Accordingly, IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (#7) is
19 **GRANTED;**

20 IT IS FURTHER ORDERED that Plaintiff's Countermotion to Amend (#11) is **GRANTED;**

21 IT IS FURTHER ORDERED that Plaintiff shall file his amended complaint within ten (10)
22 days of the entry of this order, failure to do so will result in Plaintiff's action being dismissed with
23 prejudice;

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1 IT IS FURTHER ORDERED that Plaintiff's Unopposed Motion to Extend (#8) is
2 **GRANTED nunc pro tunc.**

3 DATED this 21st day of March 2011.
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7 Kent J. Dawson
8 United States District Judge
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